



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110901552-20494-02]

RIN 0648-BB34

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements measures in Amendment 17 to the Northeast Multispecies Fishery Management Plan which was approved on March 8, 2012. This action amends the Northeast Multispecies Fishery Management Plan to explicitly define and facilitate the effective operation of state-operated permit banks. As proposed in Amendment 17, state-operated permit banks may be allocated an annual catch entitlement and specifically authorized to provide their annual catch entitlement and/or days-at-sea to approved groundfish sectors to enhance the fishing opportunities available to sector members. This action also approves a provision allowing NMFS to issue a days-at-sea credit to a vessel that cancels a fishing trip prior to setting or hauling fishing gear.

DATES: This rule is effective [insert date 30 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the Amendment 17 document, including an environmental assessment and a regulatory impact review, are available from the Northeast Regional Office of the National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Northeast Regional Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281-9182; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized the allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, each sector must prepare a sector operations plan, which must be submitted to NMFS along with signed sector member contracts and an environmental assessment (EA), or other appropriate environmental analysis. Amendment 16 (74 FR 18262; April 9, 2010) expanded sector management measures and authorized 17 new sectors, for a total of 19 sectors. The amendment defined a sector as “[a] group of persons (three or more persons, none of

whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.” A sector’s TAC is referred to as an annual catch entitlement (ACE). Each sector’s ACE for a particular stock represents a share of that stock’s annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contribution (PSC) of permits participating in that sector. Regional Administrator (RA) approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each fishing year. Each sector is responsible for monitoring its catch, reporting catch to NMFS, and ensuring it does not exceed its ACE.

In 2009 and 2010, NOAA provided nearly \$5 million in funding through Federal grants to the states of Maine, New Hampshire, and Rhode Island for the express purpose of establishing several “permit banks” of NE multispecies fishing vessel permits.¹ The permit banks were developed jointly by the states and NMFS, through memoranda of agreement (MOA), to help promote the effective implementation of catch share programs in New England and to mitigate some of the potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses. The intent of the permit bank program is for states to use the funding to obtain fishing vessel permits and then to provide the fishing opportunities associated with those permits in the form of ACE and/or days-at-sea (DAS) to qualified fishermen.

¹ \$1 million initially provided to the Commonwealth of Massachusetts for a permit bank has been, at the request of the Commonwealth, reprogrammed for use in a revolving loan fund intended to serve a similar purpose as the permit bank.

State-operated permit banks are not specifically recognized under the current NE Multispecies FMP, and are not allocated, or authorized to transfer, ACE outside of the current sector program. Because of this, the only mechanism currently available for a state-operated permit bank to be allocated and to transfer ACE is for the state to either enroll in an existing sector or to form its own sector with other permit holders. Both of these methods complicate the operation of the state permit banks and add administrative requirements that are redundant with requirements of memoranda of agreement (MOA) that were signed with the states and NOAA's National Marine Fisheries Service (NMFS) as a prerequisite for receiving the grant awards.

This action implements Amendment 17 to the NE Multispecies FMP which was approved on March 8, 2012. The amendment as implemented explicitly defines and facilitates the effective operation of state-operated permit banks by specifically recognizing state-operated permit banks under the provisions of the NE Multispecies FMP. As such, a state-operated permit bank can now be allocated ACE and is able to transfer ACE to an approved sector without having to enroll in another sector or create its own sector. Separately from Amendment 17, this action also amends the regulations implementing the NE Multispecies, Monkfish, and Atlantic Sea Scallop FMPs to include a provision that would allow NMFS to issue a DAS credit to a vessel that canceled a fishing trip prior to setting or hauling fishing gear and if the vessel, therefore, did not catch or land fish at any time on the trip.

A notice of availability for Amendment 17 was published in the Federal Register on December 12, 2011 (76 FR 77200) and public comments were accepted through February 10, 2012. A proposed rule to implement measures in Amendment 17 was

published in the Federal Register on December 22, 2011 (76 FR 79612) and public comments were accepted through January 23, 2012. The Amendment 17 proposed rule included a detailed description of sector management, state-operated permit banks, the proposed measures, and other issues that influenced the development of this action. Amendment 17 was approved on March 8, 2012.

Approved Measures

The following summarizes the approved Amendment 17 measures as well as the DAS credit provision as previously proposed. These measures build upon the provisions implemented by previous management actions and are intended to either supplement or replace existing regulations that would otherwise apply to state-operated permit banks. This final rule also revises regulations that are not specifically identified in Amendment 17, but are necessary to clarify existing provisions, as described further below.

1. Definition of a State-Operated Permit Bank

Amendment 17 defines a state-operated permit bank as a permit depository established through an agreement between NOAA and a state in which Federal grant funds are used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by the state to qualified sectors. State-operated permit banks are not equivalent to groundfish sectors.

State-operated permit banks shall be deemed to meet the definition above, and therefore qualify to operate as intended in this action, so long as the state-operated permit bank was initially established using a Federal grant award from NOAA for this purpose and the state maintains a valid MOA with NMFS. The MOA between NMFS and each state establishes the parameters that the state must follow in order to receive Federal grant

funding that is then applied towards purchasing NE multispecies permitted vessels and transferring the ACE allocated to the permit bank to approved sectors. A state-operated permit bank must have a valid MOA in order to operate. State-operated permit banks are no longer subject to the requirement that three or more persons be included in a sector.

2. Clarification and Streamlining of Administrative Procedures and Requirements for State-Operated Permit Banks

This action allows state-operated permit banks to be allocated ACE and/or DAS and authorizes them to provide ACE to approved groundfish sectors to enhance the fishing opportunities available to sector members. State-operated permit banks are required to comply with the terms and conditions of any applicable Federal grant agreement (i.e., a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank), as well as meet the requirements specified in an MOA established with NMFS for administering the permit bank.

State-operated permit banks are required to report to the Council annually on the performance of the permit bank. Such reports must include, to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all reporting requirements within the MOA. State-operated permit banks are exempt from many of the sector reporting requirements because state-operated permit banks are prohibited from actively fishing.

State-operated permit banks are not authorized to acquire, except as described below, additional ACE or DAS for a fishing year through a transfer from a sector or other vessels because the purpose of the state-operated permit banks is to transfer out ACE and DAS to sector fishermen in need of additional allocation, not to accumulate ACE or

DAS. However, if a sector receives a transfer of ACE, or a vessel receives DAS, from a state-operated permit bank but wishes to return either the (unused) ACE or DAS to the permit bank, NMFS could, upon written agreement by both parties, void the initial transfer, thereby returning the ACE or DAS to the permit bank. The state permit bank would then be free to redistribute the available ACE or DAS to another sector or vessel. In addition, and subject to the terms and conditions of the states' permit bank MOAs with NMFS, state-operated permit banks are authorized to transfer ACE, on a stock-by-stock basis, to other state-operated permit banks for the purpose of maximizing the fishing opportunities made available by the permit banks to sector members. For example, the Rhode Island state permit bank could transfer ACE for Gulf of Maine cod to the Maine state permit bank in exchange for ACE for Southern New England/Mid-Atlantic yellowtail flounder.

For the reasons stated in the proposed rule, NMFS highlighted the need for public comment in the proposed rule on two specific provisions of Amendment 17 raised by the New England Fishery Management Council, detailed in the September 7, 2011, “deeming” letter to the Regional Administrator.

First, NMFS specifically solicited public comment on whether state-operated permit banks should be prohibited from using additional funds to acquire permits prior to Council review. The State of New Hampshire commented that it was “not opposed” to the proposed regulation as written. However, NMFS has determined that the proposed rule is inconsistent with Amendment 17 language and it is not appropriate in the context of Amendment 17 for NMFS to prohibit the mere acquisition of a permit that may or may not be used in the state-operated permit bank. Moreover, there is nothing in the current

regulations that prohibits any interested party, including a state, from acquiring a permit. Therefore, the Council cannot prohibit a state from acquiring a permit with additional funding it receives or impose any conditions on the acquisition of such a permit. If more funds become available to a state, the use of those additional funds to allocate or transfer ACE by a state-operated permit bank as defined in this action must first be reviewed by the Council for consistency with the goals and objectives of the NE Multispecies FMP prior to the state using those funds outside of the sector process. A state would not be authorized to allocate or transfer any ACE that may be associated with new permits obtained as a result of the additional funds, unless the state either: (1) provides the Council the opportunity to review the implications of the expanded permit bank to the goals and objectives of the NE Multispecies FMP; or (2) forms or joins an approved groundfish sector. This language is consistent with the language in Amendment 17 as approved by the Council. The regulations implemented by this rule have been changed accordingly.

Second, NMFS sought public comment on whether state-operated permit banks should be allowed to carry-over unused ACE and DAS from one fishing year into the next. In deeming the proposed regulations necessary and appropriate for implementing Amendment 17, the Council questioned whether the carryover of unused ACE provision for sectors in current regulations should be included in these implementing regulations even though the amendment is silent on this issue. However, the Council did not submit a comment on this issue. In the absence of any comments on this issue, and because the amendment itself and accompanying regulations do not propose carry-over provisions, NMFS cannot unilaterally add such a provision to this final rule. Moreover, NMFS

summarized in the proposed rule that there are reasons distinct from the sector process that explain why carry-over may not be appropriate for state-operated permit banks. Therefore, state-operated permit banks cannot carry-over uncaught ACE from one fishing year to the next.

3. Canceled Trip DAS Credit

This final rule implements a provision that is separate from Amendment 17, allowing NMFS to credit DAS to a vessel that cancels a fishing trip prior to setting or hauling fishing gear and which, therefore, does not catch or land fish at any time on the trip. This provision applies to all fisheries that operate under a DAS management system, specifically the NE multispecies, monkfish, and Atlantic sea scallop fisheries. Because this DAS credit would only be granted for situations in which no fishing activity occurs, it is not expected to have a negative impact on fishing-related mortality in the DAS fisheries. This measure will be applied retroactively for the 2011 fishing years for those fisheries (the fishing years are not the same).

To ensure the enforceability of this provision, vessels seeking a DAS credit must notify NMFS' Office of Law Enforcement (OLE) to coordinate a monitored landing event. Vessels that are required to use a vessel monitoring system (VMS) must send a VMS email to OLE at the earliest opportunity prior to crossing the VMS demarcation line upon return to port. Vessels not required to use a VMS must use the interactive voice response (IVR) line to make the notification. Additionally, both VMS and IVR vessels must submit a written DAS credit form along with the vessel trip report for the canceled trip to NMFS.

The following information must be submitted on the written DAS credit request form: Owner/corporation name; vessel name; permit number; U.S. Coast Guard documentation number or state registration number; vessel operator name; trip departure and landing date; date and time VMS email was sent or IVR backup line was called; and reason for canceling the trip. Forms must be submitted within 30 days from the day the vessel returned to port on the canceled trip.

For DAS credits that are requested near the end of the fishing year, the credited DAS will apply to the year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year can be carried over into the next fishing year, provided they do not to exceed the maximum number of DAS allowed to be carried over for the fishery being credited.

Comments and Responses

Three comments were received on the proposed rule. Two comments, one from the State of New Hampshire, and one from a member of the public, expressed general support for the amendment. One comment from a member of the fishing industry expressed concern about common pool vessels being excluded from state-operated permit bank ACE.

Comment 1: The State of New Hampshire did not oppose the Council reviewing plans by its state-operated permit bank prior to acquiring additional Federal fishing permits.

Response: NMFS has determined that the proposed regulation for this provision is not consistent with Amendment 17 and it is not appropriate for NMFS to prohibit the mere acquisition of a permit by a state in the context of Amendment 17. In addition,

nothing in the current regulations for this provision prohibits any interested party, including a state-operated permit bank, from acquiring a permit. Therefore, this rule does not prohibit a state from acquiring a permit or impose conditions on a state regarding such an acquisition. Rather, this rule provides that if more funds from any source become available to a state to obtain additional permits, the state-operated permit bank may not allocate or transfer ACE that may be associated with the new permit until the state-operated permit bank provides the Council with the opportunity to review the implications of the expanded permit bank with the goals and objectives of the NE Multispecies FMP. However, once the Council has the opportunity to conduct such a review, the state-operated permit bank may allocate or transfer any such ACE provided it is consistent with the MOAs with NOAA and other applicable law.

Comment 2: The State of New Hampshire was not opposed to allowing DAS credit to vessels cancelling fishing trips prior to engaging in fishing activity for fisheries managed under a DAS system

Response: NMFS agrees with this comment and has approved this measure in this action.

Comment 3: One individual expressed concern that fishermen not enrolled in a sector (i.e., the common pool) are unable to acquire ACE from state-operated permit banks.

Response: Prior to Amendment 17, the only entities able to transfer ACE were approved sectors. Amendment 17 allows a state-operated permit bank to transfer ACE and/or DAS to another sector without becoming or enrolling in a sector. Neither sectors nor state-operated permit banks are able to transfer ACE to an individual not enrolled in a

sector. However, common pool vessels may lease DAS from a state-operated permit bank for cooperative research purposes. Allowing a permit bank to transfer ACE to an individual fisherman in the common pool is inconsistent with current regulations and the FMP and therefore prohibited. Moreover, because this type of transfer regarding sectors was not proposed in Amendment 17, NMFS may not unilaterally add it.

Changes from the Proposed Rule

As described above, NMFS has determined that the proposed rule is inconsistent with Amendment 17 language, and that it is not appropriate in the context of Amendment 17 for NMFS to prohibit the mere acquisition of a permit that may or may not be used in the state-operated permit bank. Therefore, the regulation at 50 CFR 648.87(e)(6) has been modified in this final rule to be consistent with the language in Amendment 17 as approved by the Council.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 17 to the NE Multispecies FMP is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, 5 USC 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities.

The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and that has been submitted for approval by OMB under control numbers 0648-0202 and 0648-1212. NMFS will notify the affected public through a follow-up notice in the Federal Register announcing OMB's clearance of the collection-of-information requirements. Under this action, in order to request a DAS credit, vessel owners are required to provide NMFS with an initial notification as well as the submission of a DAS credit request form. The public burden for requesting a DAS credit is estimated to average 15 minutes per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fish, Fisheries, Reporting and Record Keeping Requirements

Dated: March 19, 2012

Samuel D. Rauch III,
Acting Assistant Administrator
For Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648 – FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.2, revise the definition for “Annual catch entitlement (ACE)” and add a new definition for “State-operated permit bank” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Annual catch entitlement (ACE), with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative

fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

* * * * *

State-operated permit bank means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons and that meets the requirement of § 648.87(e).

* * * * *

3. In § 648.53, revise paragraph (f) to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(f) DAS credits -- (1) Good Samaritan credit. A limited access vessel operating under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can

document the occurrence through the USCG, will not accrue DAS for the time documented.

(2) Canceled trip DAS credit. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to

port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (d) of this section.

* * * * *

4. In § 648.82, remove and reserve paragraph (m) and revise paragraph (f) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(f) DAS credits -- (1) Good Samaritan credit. A limited access vessel fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, shall not accrue DAS for the time documented.

(2) Canceled trip DAS credit. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was

canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(3) DAS credit for standing by entangled whales. A limited access vessel fishing under the DAS program that reports and stands by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(i) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(ii) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(iii) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If

the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(iv) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status; date of first communication with the USCG; and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

* * * * *

5. In § 648.87, add paragraph (e) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(e) State-operated permit bank. A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank, including the amount, by stock, of ACE transferred to each

sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) Eligibility. If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) Allocation and utilization of ACE -- (i) Allocation of ACE. The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be “ACE permits,” pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) Acquiring ACE. Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to another qualifying sector during that fishing year.

(iii) Transferring ACE. Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(4) Allocation and utilization of days-at-sea -- (i) Allocation of DAS. The number of DAS available for a state-operated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(v) of this section to be either "ACE permits" or "common pool permits" for that fishing year, consistent with the terms of the state's permit bank MOA.

(ii) Acquiring DAS. A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) Annual report. A state-operated permit bank shall report to the Council annually on the performance of the state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) Use of additional funds. If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not allocate or transfer any ACE that may be associated with any new permit purchased with those funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) Violation of the terms and conditions applicable to a state-operated permit bank. If a state or state-operated permit bank violates or fails to comply with any of the requirements and conditions specified in this section or in the MOA referenced in paragraph (e)(1) of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

6. In § 648.90, revise paragraph (a)(2)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system

* * * * *

(a) * * *

(2) * * *

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in

the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; and designating habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch,

and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

* * * * *

7. In § 648.92, revise paragraph (b)(4) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(4) DAS credits -- (i) Good Samaritan credit. A limited access vessels fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(ii) Canceled trip DAS credit. A limited access vessel operating under the DAS program and that end a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements.

(A) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(B) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(C) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(D) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (b)(4)(ii)(B) and (C) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs

(b)(4)(ii)(B) and (C) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(E) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(F) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

[FR Doc. 2012-7062 Filed 03/22/2012 at 8:45 am; Publication Date: 03/23/2012]